

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

BRYAN PURCELL and
GEORGENE STERGALAS,

Plaintiffs,

v.

Case No. 10-13444

IMAD FADLALLAH, et al.,

Defendants.

ORDER DIRECTING PLAINTIFF TO FILE SUPPLEMENTAL BRIEFING

The Board of Education for Dearborn Public Schools discharged Plaintiff Bryan Purcell for failing to fulfill his duties as a teacher. Purcell appealed to the Michigan State Tenure Commission (the “Tenure Commission”), and an administrative law judge (“ALJ”) concluded that there was just and reasonable cause for Purcell’s termination. Purcell filed Exceptions to the ALJ’s decision which were rejected by the Tenure Commission.

Purcell sued the Dearborn Public School District (the “District”) and employees of the District, alleging thirteen claims under federal and state law. Defendants move for summary judgment and argue that Purcell is collaterally estopped from litigating seven of the claims at issue. Collateral estoppel applies only if a final judgment has issued. *McCormick v. Braverman*, 451 F.3d 382, 397 (6th Cir. 2006). A party has twenty days to appeal to the Michigan Court of Appeals a decision of the Tenure Commission. Mich. Comp. Laws § 38.104(7). If an appeal is not filed within twenty days, the Tenure Commission’s decision becomes final. *Id.*

Defendants argue that the Tenure Commission's decision, which issued on August 24, 2012, is final because Purcell did not timely appeal. Purcell contends that the Tenure Commission's decision is not final because he is in the process of filing a late application for leave to appeal. A party may file a late application for leave to appeal within six months after the Tenure Commission enters an order. Mich. Ct. R. 7.105(F). Purcell's claims may not be collaterally estopped if he filed a late application for leave to appeal and the Michigan Court of Appeals granted leave. Accordingly,

IT IS ORDERED that Plaintiff Bryan Purcell is DIRECTED to submit a supplemental brief, not longer than two pages in length, that answers only the following questions:

1. Did Purcell file a late application for leave to appeal the Michigan State Tenure Commission's "Decision and Order on Exceptions" issued on August 24, 2012?

2. If Purcell filed a late application for leave to appeal, on what date was the application filed?

2(a). If Purcell filed a late application for leave to appeal, Purcell must submit a copy of the application.

3. If Purcell filed a late application for leave to appeal, has the Michigan Court of Appeals issued a ruling on the application?

4. If the Michigan Court of Appeals issued a ruling on Purcell's late application for leave to appeal, did the Michigan Court of Appeals grant the application?

4(a). If the Michigan Court of Appeals issued a ruling on Purcell's late application for leave to appeal, Purcell must submit a copy of the

ruling.

The supplemental brief must be submitted by **June 10, 2013**.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: June 4, 2013

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, June 4, 2013, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522